

# **Exhibit A**



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# Transcript of Al Hank, Corporate Designee

**Date:** June 27, 2019

**Case:** Graham -v- Famous Dave's Of America, Inc., et al.

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Transcript of Al Hank, Corporate Designee

Conducted on June 27, 2019

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1 Q Okay. Does Famous Dave's utilize a tip  
2 credit?

3 A Yes.

4 Q Okay. Do you know what states Famous  
5 Dave's utilizes a tip credit in?

6 A All states we operate in.

7 Q Okay.

8 A Except for Minnesota because Minnesota  
9 would be as a non -- we have to pay minimum wage  
10 for all tip positions.

11 Q Okay. You say tip positions, what tip  
12 positions are there within Famous Dave's?

13 A Server, bartender, host. I think  
14 catering would be a position that can receive tips  
15 as well.

16 Q Okay. Do you know if the catering  
17 position, they are paid the full minimum wage in  
18 addition to receiving tips or if they're paid a  
19 sub minimum wage with the expectation of the tips  
20 plus a sub minimum wage will equal a minimum wage?

21 A Our catering wages are paid well above  
22 minimum wage. Plus able to receive tips.

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1 Q Okay. Whereas -- and just so that we  
2 make sure we have the same -- speaking the same, a  
3 server is paid below, for example, the federal  
4 minimum wage of 7.25 with the expectation that  
5 their tips plus the cash wage that Famous Dave's  
6 pays them will equal or exceed the minimum wage?

7 A In the states that were able to do so,  
8 yes.

9 Q Right. Okay. And the exception you  
10 said as Minnesota because Minnesota --

11 A Correct. Is not a tip credit state.

12 Q Is not tip credit. Okay. To your  
13 knowledge has Famous Dave's used the tip credit  
14 continuously since January of 2016?

15 A Yes.

16 Q Okay. Do you know the circumstances in  
17 which an employer may utilize the tip credit?

18 A Can you repeat the question?

19 Q Yeah. Do you know the circumstances or  
20 what requirements have to be met in order for an  
21 employer to use the tip credit, if you know?

22 A I'm not sure I'm understanding. From a

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1 recognize that document?

2 A Yes.

3 Q Okay. What is that document? Is that  
4 document the FAQ that you just referenced?

5 A Yes.

6 Q Okay. Is this a document that you  
7 reviewed in preparation for today?

8 A Yes.

9 Q Okay. Within Famous Dave's when  
10 a -- no, let me step back. For servers,  
11 bartenders and hosts for purposes of today is it  
12 fair if we refer to them as tipped employees?

13 A Yes.

14 Q Okay. When a new tipped employee is  
15 brought onto Famous Dave's do they go through a  
16 hiring process?

17 A Yes.

18 Q Or a training process?

19 A Yes.

20 Q Okay. Can you describe for me what that  
21 training process is?

22 A The training process would start with

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1 Q To your knowledge is this a document  
2 that Famous Dave's uses to inform tipped employees  
3 that intends to take a tip credit?

4 A Exhibit 2?

5 Q Yes.

6 A Can you restate the question a little  
7 please?

8 Q Certainly. Is Exhibit 2, the document  
9 that's titled Fair Labor Standards Act Notice to  
10 Tipped Employees, is this the document that Famous  
11 Dave's uses to notify tipped employees of intent  
12 to take a tip credit?

13 A I think it's a piece of it and also our  
14 tip pooling and reporting policy as well.

15 Q Okay. And the tip pooling and reporting  
16 policy that you just referenced, would that be  
17 Exhibit 4?

18 A That's correct.

19 Q Okay. So as I understand your  
20 testimony, Exhibits 2 and Exhibit 4 are the  
21 documents that Famous Dave's uses to notify tipped  
22 employees intent to take a tip credit?

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1 A To my knowledge, yes.

2 Q Okay. When you were a general manager -

3 -

4 A Yes.

5 Q -- was there any other document that was  
6 used? Was there any document that was used to  
7 notify tipped employees of their intent to take a  
8 tip credit?

9 A I don't remember quite honestly.

10 Q Okay. Exhibit 2, at the bottom it says  
11 just above the number, the FDA 000034, and I will  
12 represent to you that those are letters that we  
13 lawyers put on documents so that way we can  
14 reference them. Just above that number there's a  
15 date, May 2011. Do you see that?

16 A Yes.

17 Q Okay. To your knowledge was this  
18 document developed in or around May of 2011, if  
19 you know?

20 A Yes.

21 Q Okay. To your knowledge has this  
22 document been subsequently revised at any point

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1 presented to me?

2 Q Correct.

3 A Not that I can recall, no.

4 Q Okay. With respect to Exhibit 2, to  
5 your knowledge was it Famous Dave's intent that  
6 this document apply to all employees that they  
7 intended to utilize a tip credit for?

8 A Yes. For tip credit employees, yes.

9 Q Okay. And that means this policy  
10 applied -- Exhibit 2 applied to all Famous Dave's  
11 restaurants regardless of the state that they're  
12 in, correct?

13 A I can speak for the corporately owned  
14 restaurants, yes.

15 Q Yes. Just for the corporately owned.

16 A Yes.

17 Q Yes. Okay. Do you know how this  
18 document is sent to or distributed to the  
19 individual restaurants?

20 A Today?

21 Q Yes.

22 A This would be in electronic format.

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1 Q An electronic format available on a  
2 platform?

3 A Yes, it would be -- in current state it  
4 would be in ADP and as a part of their onboarding  
5 process.

6 Q Okay. And do you know when that ADP  
7 onboarding process first began being utilized by  
8 Famous Dave's?

9 A I wouldn't feel comfortable giving an  
10 exact time frame. There's been, like I stated  
11 earlier, quite a few variations and turnover. I  
12 don't know off the top of my head.

13 Q Okay. To your knowledge are individual  
14 restaurants able to revise or edit Exhibit 2?

15 A No.

16 Q Okay. To your knowledge is there any  
17 difference between Exhibit 2 based on the state  
18 that a restaurant may be located in?

19 A No, not to my knowledge.

20 Q Let's start back in February 2016. How  
21 was Exhibit 2 presented to an employee in February  
22 of 2016?

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1 on paper.

2 Q Correct.

3 A Okay. So on paper they would do the  
4 orientation process in-person with the team  
5 member. They would review, acknowledge, sign  
6 policies. Those records would be retained in  
7 their employee file in the manager's office and  
8 that would be something that would be spot checked  
9 and verified by the area director on their trip  
10 reports.

11 Q Other than that spot check by an area  
12 manager, was there any other confirmation by  
13 Famous Dave's above the manager level that the  
14 form was actually reviewed and signed by the  
15 employee?

16 A Not that I recall.

17 Q Okay. To your knowledge is there any  
18 documentation that my client has signed a copy of  
19 Exhibit 2?

20 A I believe so because I believe it was on  
21 electronic format and to my understanding of how  
22 the system works, we wouldn't have been able to

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1 complete the hiring process without the  
2 acknowledgement.

3 Q Is there any confirmation that that was  
4 done within the process because I haven't seen  
5 anything.

6 A No, I do not have confirmation right  
7 now.

8 Q Okay. Other than Exhibit 2 and Exhibit  
9 4 which is -- is there any other information  
10 provided to managers regarding Famous Dave's use  
11 of the tip credit?

12 A It would be part of their training. So  
13 when they're going through their what we call MIT  
14 training which just stands for manager-in-  
15 training, it's part of the review of that training  
16 process. They have an eight-week training program  
17 when they're going into management and how we  
18 would handle whether it's orientations or  
19 onboarding. All of those aspects are covered  
20 during that training process.

21 Q Are managers -- okay, that eight-week  
22 training program, how long has that been in

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1 receives go into the tip pool?

2 A Sorry. I'm just reading the --

3 Q Uh-huh.

4 A And can you restate the question?

5 Sorry.

6 MR. WELLS: Yeah, you want to read that  
7 part back?

8 COURT REPORTER: Yeah.

9 (Court reporter played back previous  
10 question.)

11 Q Okay. What does it mean? How much of  
12 the employee's tips go into the tip pool?

13 A The servers would contribute three  
14 percent of their net sales to a tip pool and then  
15 those -- 100 percent of those tips that are funded  
16 from the servers would then be allocated amongst  
17 the tipped employees for that shift dependent upon  
18 hours worked and the designation of the split by  
19 the general manager. So it could be, for example,  
20 hosts and bartenders --

21 Q Right.

22 A -- would be tipped employees and the

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1 of their tips but rather that limit of three  
2 percent that you described for me?

3 MS. SMITHEY: Objection. You can  
4 answer.

5 A I'm sorry. One more time.

6 Q Yeah. Is there -- are tipped employees  
7 informed that contrary to how this sentence is  
8 written that they do not have to contribute 100  
9 percent of their tips to the tip pool but rather  
10 that cap of three percent that you described for  
11 me?

12 A I do believe that we have it in writing.  
13 I don't know that I know off the top of my head  
14 what policy it is.

15 Q Do you know if that document that you're  
16 referencing that you believe is in writing, is  
17 that a document you reviewed in preparation for  
18 today's deposition?

19 A No, not that I recall.

20 Q Okay. Do you know if that document was  
21 produced as part of discovery in this case?

22 A I don't -- I don't think so.

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1 how a manager would be trained on how they would  
2 notify the team member?

3 Q Yeah.

4 A I mean that would be covered in the  
5 orientation I guess. I'm not sure -- I may be a  
6 little confused. I'm sorry.

7 Q And I don't want you to be confused so  
8 let's -- let me try to break this down. Exhibit 2  
9 is what a new hire tipped employee is given by the  
10 manager at orientation, correct?

11 A Correct.

12 Q Okay. And when a manager is going  
13 through their training, their eight-week training  
14 part of what they witness is they witness another  
15 manager orient a new hire including the review of  
16 Exhibit 2, correct?

17 A Correct.

18 Q Okay. Setting that aside, is there any  
19 other training that is provided to a new manager  
20 with respect to the tip credit notification?

21 A No, not to my knowledge.

22 Q Okay. Have you heard the term "dine and

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1 dash"?

2 A Yes.

3 Q Okay. What's your understanding of what  
4 the term "dine and dash" means?

5 A There would be customers in the  
6 restaurant who would order something, something  
7 would be given them of value and they would leave  
8 the restaurant without paying.

9 Q In your many years of experience within  
10 the restaurant industry have you ever witnessed or  
11 heard of a dine and dash occurring at Famous  
12 Dave's?

13 A Yes.

14 Q Okay. More than one occasion?

15 A Yes.

16 Q Okay. Is there a written policy within  
17 Famous Dave's regarding dine and dashes?

18 A No, not to my knowledge.

19 Q Okay. Are managers provided any written  
20 directive that says a tipped employee is not  
21 required or not responsible for a dine and dash?

22 A Not that I recall, no.

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1 Q Okay. Are managers provided any written  
2 material that says an employee cannot be required  
3 to surrender part of their tips to cover a dine  
4 and dash?

5 A Not to my knowledge.

6 Q Okay. Exhibit 5, the cash handling. Is  
7 this another -- this is another policy that's  
8 reviewed as part of a tipped employee's new hire  
9 orientation, correct?

10 A Correct.

11 Q Okay. Are all tipped employees subject  
12 to this policy?

13 A Yes.

14 Q Okay. And therefore this policy covers  
15 all Famous Dave's company owned locations,  
16 correct?

17 A Correct.

18 Q Okay. At the top of this document it  
19 says effective July 2015. Do you see that?

20 A Yes.

21 Q Okay. To your knowledge was there a  
22 prior version of this document?

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1 Q Okay. Is that the MICROS that you were  
2 just talking about earlier at the beginning of the  
3 deposition?

4 A MICROS is the point-of-sale.

5 Q Okay. So let's -- point-of-sale, I  
6 think I understand but I want to have the record  
7 clear. Point-of-sale, is that the system that a  
8 tipped employee uses to enter a customer's order?

9 A Yes.

10 Q Okay. As well as close out their check?

11 A Yes.

12 Q Okay. Is it also a system that they  
13 typically uses to clock in and clock out the  
14 beginning and end of their shift?

15 A Correct.

16 Q Okay. Has that point -- has the point-  
17 of-sale system in all the function that we just  
18 described been used by Famous Dave's since  
19 February of 2016 to present?

20 A Yes.

21 Q Okay. Has the same system, point-of-  
22 sale system been used by Famous Dave's during that

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1           A     Yes. Slight variation because they have  
2 a cash drawer that they're operating under, but  
3 yes.

4           Q     Okay. And all servers use the same POS  
5 system, correct?

6           A     Yes. We did install a -- I was just  
7 thinking of we just did install a new point-of-  
8 sale system in our Minnetonka, Minnesota location.  
9 That was about six months ago. Just a single unit  
10 and then subsequently in one of our acquisitions  
11 we've also rolled out a new point-of-sale in the  
12 last month or two.

13          Q     Are those two locations --

14          A     Sorry. It would be seven restaurants in  
15 total amount.

16          Q     Are you thinking about switching the  
17 point-of-sale system?

18          A     There's potential, yes.

19          Q     Okay. On Exhibit 7, just so I can make  
20 sure I can understand all the other documents  
21 (inaudible) each and every one, under timekeeping  
22 policy it says, For use with all non-exempt team

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1 members, FOH and BOH. FOH, is that front of  
2 house?

3 A Correct.

4 Q Who are front of house employees?

5 A The job codes?

6 Q Yes.

7 A To-go, cashiers, hosts, servers,  
8 bartenders. Catering would fall under front of  
9 house. Delivery is a job code. I think that  
10 covers most of them.

11 Q So all servers and all bartenders are  
12 considered front of house?

13 A Correct.

14 Q Is front of house positions, are they  
15 considered customer facing, customer interaction  
16 positions?

17 A Yes.

18 Q Okay. BOH, is that back of house?

19 A Correct.

20 Q I think I have an idea what BOH is but -  
21 -

22 A Line cook, prep cook, dishwashers,

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1 expeditors. Those positions are back of house  
2 team members.

3 Q Okay. So as a clear delineation, front  
4 of house are folks who interact with customers  
5 directly and back of house do not interact with  
6 customers directly?

7 A Yes. Generally speaking, yes.

8 Q Okay. Do you know approximately how  
9 many tipped employees Famous Dave's currently  
10 employs, ballpark?

11 A You said currently, correct?

12 Q Yes.

13 A Five, six hundred maybe.

14 Q Within Famous Dave's is there a  
15 guideline with respect to how many tipped  
16 employees are needed to staff a restaurant?

17 A No, because staffing levels would be  
18 dependent upon volume. So it would just be  
19 dependent on the location, how that restaurant  
20 performs.

21 Q Within Famous Dave's do they breakout  
22 restaurants based upon volume of sales?

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1 restaurant would have a certain amount of -- level  
2 of server?

3 A There's a variety of platforms that we  
4 use to help with scheduling and those items, yeah.  
5 A lot of it is derived off of guest counts. You  
6 know, hourly trends, et cetera. But we have a ton  
7 of applications that are used to help that, yes.

8 Q So those applications that you use, what  
9 would they expect the level of staffing to be for  
10 that restaurant?

11 A As far as a head count --

12 Q Yeah.

13 A -- is concerned on a two-and-a-half  
14 million?

15 Q Uh-huh.

16 A Servers, 15 roughly.

17 Q Okay. And how about for bartenders?

18 A Four.

19 Q Okay. Who sets the target for the  
20 number of tipped employees that are kind of  
21 different shift? Is that done at the management  
22 level or the manager level or the corporate level?

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1 Q Okay. Are all servers expected to  
2 conform to the general duty and responsibility set  
3 forth in this job description?

4 A Yes.

5 Q Okay. Under other factors on the second  
6 page it says, EG travel. Do you see that?

7 A Yes.

8 Q And it says, Comments, up to 15 percent,  
9 may deliver full-service catering. What's that  
10 mean?

11 A That's where a team member would have to  
12 travel from the restaurant to a outside catering  
13 event and (inaudible).

14 Q Okay. Does an individual employee  
15 receive a copy of this job description?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes.

19 Q Okay.

20 A I was kind of doing good in the  
21 beginning. I've gone down now.

22 Q You're doing well until the court

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1 Q Are all servers expected if necessary to  
2 perform these tasks?

3 A They all don't do that, no.

4 Q They all don't do that?

5 A Correct.

6 Q Could they do these tasks?

7 A Sure. It could happen, yes.

8 Q Could a server be asked to do any one or  
9 more of these tasks?

10 A Yes.

11 Q Okay. Would a server because it's in  
12 his job summary potentially be subject to  
13 termination or reprimand if they don't perform one  
14 of these side tasks, side duties?

15 A Yes.

16 Q Okay. It says rolling silverware. It's  
17 been a few years since I've been in a restaurant  
18 but is that where you actually roll a fork and  
19 knife in a napkin?

20 A Correct.

21 Q Okay. Expediting orders, what's that?

22 A That would be where the food is sold in

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1 A Yes.

2 Q Okay. Have you ever inquired as to why  
3 there's essential columns there?

4 A No.

5 Q Okay. What's that "we" column?

6 A How much of the job is -- of the total  
7 job how much they'll be doing that work.

8 Q Okay. Who determined that estimation,  
9 do you know?

10 A This would come from our HR department  
11 and outside legal counsel, et cetera.

12 Q Okay. Has Famous Dave's done any, to  
13 your knowledge, internal counting to determine the  
14 percentage of an employee -- of a server's job  
15 that is spent performing side work?

16 A Not to my knowledge.

17 Q Okay. Does Famous Dave's have any  
18 directives or policies with respect to limiting an  
19 amount of a server's side work?

20 A Right now when servers are coming in for  
21 the beginning of their shift and there's opening  
22 duties they are clocked -- they clock in at

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1 minimum wage. They would convert to the tipped  
2 wage once they received their table.

3 Q Okay. When did that policy change  
4 occur?

5 A Somewhere in the last year-and-a-half or  
6 so.

7 Q Okay. Do you know why that policy  
8 change occurred?

9 A It was part of our review of what we  
10 were doing inside of the restaurants.

11 Q Okay. So if I understand correctly in  
12 the last approximately year-and-a-half servers  
13 when they come in if they're performing opening  
14 duties they clock in and get paid the full minimum  
15 wage rate and then once they get assigned their  
16 first table they clock in under their tipped  
17 server code?

18 A Correct.

19 Q Okay. Is there any other time when a  
20 server would clock in under a full minimum wage  
21 rate?

22 A If they were training they'll get paid a

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1 higher rate and at the end of the shift if there  
2 was, you know, a large amount of additional work  
3 that was about to occur they would switch to a  
4 minimum wage rate.

5 Q Who determines if there's a large amount  
6 of closing work to be done that the server should  
7 clock in under the full minimum wage rate?

8 A Management.

9 Q Management. Okay. Is there any  
10 guidance or directive provided to management to  
11 let them know, hey, this is a large amount of  
12 closing work and therefore you should have  
13 employees clock in under the full minimum wage  
14 rate?

15 A Nothing specifically that I can think  
16 of.

17 Q Okay. And that notion that if there's a  
18 large amount of closing work that they should  
19 clock in under full minimum wage rate, has that  
20 been in place for approximately the last year-and-  
21 a-half or longer?

22 A Approximately the last year-and-a-half.

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1 Q Okay. You also said a server can clock  
2 in if they're training and get paid the full  
3 minimum wage. How long has that policy been in  
4 place that if a server is training they are  
5 clocking under the full minimum wage?

6 A As long as I can remember.

7 Q Okay. And that training, is that the  
8 four days of training that you described for me  
9 earlier today?

10 A Correct.

11 Q Okay. So just to summarize, and tell me  
12 if I'm wrong, for at least well before 2016 if a  
13 server was engaged in a four days, or bartender,  
14 engaged in a four days of training they always  
15 clocked in and got paid a full minimum wage?

16 A Correct.

17 Q After they're done training they always  
18 clocked in or paid at the tipped rate up until  
19 approximately a year-and-a-half ago where if  
20 they're doing opening work they now get paid the  
21 full minimum wage, correct?

22 A Correct.

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1 Q Okay. And are servers required to make  
2 sure that that setup remains at the beginning or  
3 end of the shift?

4 A Yes.

5 (Exhibit 12 was marked for  
6 identification and is attached to the transcript.)

7 Q I'm going to hand you what's been marked  
8 as Exhibit 12. Do you recognize this document?

9 A Yes.

10 Q What is Exhibit 12?

11 A Bartender job description.

12 Q Okay. Do all bartenders within Famous  
13 Dave's, are they expected to comply with the  
14 duties and responsibilities here?

15 A Yes.

16 Q Okay. It says April 2015. Do you know  
17 if this job description has been updated since  
18 then?

19 A I'm not sure.

20 Q Okay. Again, on the second page it  
21 says, Travel, up to 15 percent. Is this for  
22 catering and vending?

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1 Q Okay. When a server is required to expo  
2 do they expo for their entire shift?

3 A Typically.

4 Q Typically. Okay. When a server expos  
5 for an entire shift are they in the payroll under  
6 a server job code or an expo job code?

7 A Expeditor.

8 Q Expeditor. Okay. Is there a directive  
9 to the restaurants that says exactly that, if a  
10 server is going to expedite they need to be under  
11 the expeditor job code?

12 A There is an expeditor job description.

13 Q Okay.

14 MR. WELLS: I'm going to ask that that  
15 get produced because I don't think we have that.

16 Q Do expeditors share in the tip pool?

17 A Yes.

18 Q They do. Okay.

19 A Most of the time, yes, from what I've  
20 experienced.

21 Q From what you experienced, okay. Is  
22 there any guideline or directive from Famous

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1 Q So it's no longer a hard copy?

2 A That's correct.

3 Q Okay. Other than an update, are you  
4 aware of any other updates done to the server  
5 training guide?

6 A As far as content?

7 Q Yes.

8 A I believe there has been content but I  
9 wouldn't be able to specifically say what.

10 Q Okay. Has the server's job duties  
11 fundamentally changed in that time period?

12 A No.

13 Q Okay. Has a bartender's job duties  
14 fundamentally changed in that time period of  
15 February 2016 to present?

16 A No.

17 Q Okay. Has the bartender training guide  
18 gone online?

19 A Yes.

20 Q Okay. Are employee -- do all employees  
21 operate under an employee handbook?

22 A Yes.

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1 Q Okay. Is that employee handbook  
2 prepared by corporate?

3 A Yes.

4 Q Do you know how many iterations of the  
5 employee handbook there have been since February  
6 of 2016 to present?

7 A I believe two.

8 Q Okay. Did you review any employee  
9 handbooks in preparation for today?

10 A The older one, yes.

11 Q The older one. Okay. Let me -- don't  
12 worry. You don't have to keep any of those  
13 documents.

14 (Exhibit 14 was marked for  
15 identification and is attached to the transcript.)

16 Q Mr. Hank, my first question is do you  
17 recognize Exhibit 14?

18 A Yes.

19 Q Is this the older handbook that you  
20 referenced --

21 A Yes.

22 Q -- that you reviewed in preparation for

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1 Q Do you know what the 80/20 tip credit  
2 rule is?

3 A I do.

4 Q What is the 80/20 tip credit rule?

5 A That a tip credit employee would not be  
6 able to spend more than 20 percent of their total  
7 time worked in a non-tipped job or function of the  
8 job.

9 Q During the time period of February of  
10 2016 to present has there been any policy or  
11 procedure in place within Famous Dave's to make  
12 sure that that 80/20 tip credit rule was not  
13 violated?

14 A Yes.

15 Q Okay. What was that?

16 A Servers clocking in at the beginning of  
17 their shift for minimum wage.

18 Q And you said that went into effect about  
19 a year-and-a-half ago?

20 A Roughly.

21 Q Okay. Other than that is there any  
22 other policy or procedure in place within Famous

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1       Dave's to ensure that the 80/20 rule was not  
2 violated?

3           A      Not that I'm aware of.

4           Q      Okay. That's the only question I have  
5 at this time. Walk me through the time clocks.  
6 It's the same POS system throughout all Famous  
7 Dave's used for employees to enter their time,  
8 correct?

9           A      No, as I mentioned earlier we have a new  
10 test point-of-sale in currently seven of our  
11 locations.

12          Q      Right. Okay. Other than those -- let  
13 me ask you this, how an employee clocks in, is  
14 that the same in both those seven test restaurants  
15 and the other restaurants or is it fundamentally  
16 different?

17          A      Basically the same.

18          Q      Okay. How does an hourly tipped  
19 employee clock in?

20          A      Through our point-of sale.

21          Q      Okay. And they clock in by doing what?

22          A      Either swiping a unique card --

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1 Q Okay.

2 A -- or a unique pin.

3 Q Okay. And that unique card or that  
4 unique pin, is that assigned by Famous Dave's?

5 A Yes.

6 Q Okay. And when is it assigned by Famous  
7 Dave's?

8 A It's assigned by the management.

9 Q I'm sorry. When is it assigned by the  
10 management to that employee?

11 A During orientation or first shift.

12 Q Okay. So an employee clocks in through  
13 either the unique pin or the unique timecard to  
14 begin the clock counting their time, correct?

15 A Correct.

16 Q Okay. Does an employee need to do  
17 anything else to begin the clock running?

18 A No.

19 Q Okay. When is an employee expected to  
20 clock in?

21 A When they're scheduled.

22 Q Okay. Is there any limitation provided

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1 servers that have nonetheless received a  
2 counseling form?

3 A I would say in my opinion it would not  
4 be a commonality that counseling forms would be a  
5 model employee.

6 Q Okay. You said forms there. How about  
7 a single form?

8 A There could be, sure.

9 Q Okay. And just so the record is clear,  
10 the only counseling form in my client's file was  
11 that single form that we looked at earlier,  
12 Exhibit 18?

13 MS. SMITHEY: Objection.

14 A That we've discovered thus far.

15 Q That you've discovered thus far. Okay.  
16 Are you aware of any policy or procedure in review  
17 of my client's file that exempted him from other  
18 policies that applied to servers? In other words,  
19 was there a policy that only applied to my client?

20 A Not to my knowledge, no.

21 Q What's your familiarity with wage  
22 statements that servers receive? I'm not sure if

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1       this does it look like my client worked at least  
2       some period of overtime?

3           A      Yes.

4           Q      Okay. Hank, I need to ask you a couple  
5       of basic questions. Payroll within Famous Dave's,  
6       is it weekly, bi-weekly, monthly, how is -- what  
7       is it?

8           A      Bi-weekly.

9           Q      Bi-weekly. Okay. So when is the start  
10      date and when is the cutoff date?

11          A      Our payroll weeks run Monday through  
12      Sunday.

13          Q      Monday through Sunday. Okay. So if I  
14      work on a Sunday I'll get paid for that Sunday two  
15      weeks thereafter.

16          A      Depending on what week of the payroll  
17      cycle we're in.

18          Q      Yeah. I'm sorry. So what day is  
19      payroll, is paychecks?

20          A      Friday.

21          Q      Friday. Okay. So payroll runs Monday  
22      through Sunday and pays on Friday, correct?

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1 yes or no question. Do you have any substantive  
2 conversations with your counsel about today's  
3 deposition, yes or no?

4 A No.

5 Q Okay. With respect to my client's pay  
6 records, Bates page 146, the regular rate it says  
7 five bucks, do you see that -- \$5, do you see  
8 that?

9 A Yes.

10 Q Okay. And I see that that lines up with  
11 his rate of pay on Bates page or document Exhibit  
12 19, his work history.

13 A Yes.

14 Q So is that fair to say that my client  
15 was paid at an hourly rate of \$5 while working as  
16 a server?

17 A Yes.

18 Q Okay. Because I note that in the rest  
19 of the pay (inaudible) \$5 for the rest of those  
20 pay periods. From that do you know how much of a  
21 tip credit Famous Dave's claimed for my client?

22 A I do not.